

AMENDED IN ASSEMBLY APRIL 22, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1852

Introduced by Assembly Member Campos

February 19, 2014

An act to add Chapter 2.8 (commencing with Section 18950) to Division 8 of the Business and Professions Code, ~~and to amend Section 11105.3 of the Penal Code~~, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 1852, as amended, Campos. Business: services to minors: background checks.

Existing law generally provides requirements for the licensing of business establishments. Existing law authorizes specified entities to receive state summary criminal history information from the Department of Justice. Existing law prohibits an employer, as a condition of employment, from asking an applicant to disclose information regarding an arrest that did not result in a conviction, as specified.

This bill would require a business that provides services to minors, as defined, to provide written notice to the parent or guardian of a youth participating in the service offered by the business regarding the business's policies relating to criminal background checks for employees who provide services to minors, as specified. ~~This bill would also authorize a business that provides services to minors to receive summary criminal history from the Department of Justice and subsequent arrest notification and would also provide that the use of that information by the business would not violate specified employment laws.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 2.8 (commencing with Section 18950) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 2.8. BUSINESSES PROVIDING SERVICES TO MINORS

18950. (a) (1) A business that provides services to minors ~~shall, as a condition of obtaining and maintaining a business license,~~ *shall* provide written notice to the parent or guardian of any minor receiving those services regarding the business's policies relating to obtaining criminal background checks for its employees.

(2) If criminal background checks are obtained for employees, the written notice described in paragraph (1) shall also contain a statement regarding whether the criminal background check includes state and federal criminal history information and the nature of the ~~type~~ *types* of offenses the program looks to identify.

(b) (1) As used in this section, a "business that provides services to minors" means a business that meets both of the following requirements:

(A) Its primary purpose is the providing *of* an extracurricular service or program ~~of instruction~~ *instruction, including, but not limited to, academic tutors and instructors,* for youth under 18 years of age.

(B) It has adult employees who have supervisory or disciplinary power over a child or children.

(2) A "business that provides services to minors" shall not include a licensed child day care facility as defined in Section 1596.750 of the Health and Safety Code or a day care center as defined in Section 1596.76 of the Health and Safety ~~Code~~ *Code, or any medical treatment facility or hospital.*

(c) As used in this section, "written notice" may include a posting on the business's Internet Web site.

(d) Nothing in subdivision (a) shall require or authorize a business subject to these provisions to disclose confidential criminal history information in violation of Article 3 (commencing with Section 11100) of Chapter 1 of Title 1 of Part 4 of the Penal Code.

(e) Compliance with this section shall not be deemed a violation of Section 432.7 of the Labor Code.

~~SEC. 2. Section 11105.3 of the Penal Code is amended to read:~~

~~11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.~~

~~(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged to a nonprofit organization. Requests received by the department for federal level criminal offender record information shall be forwarded to the Federal Bureau of Investigation by the department to be searched for any record of arrests or convictions.~~

~~(c) (1) Where a request pursuant to this section reveals that a prospective employee or volunteer has been convicted of a violation or attempted violation of Section 220, 261.5, 262, 273a, 273d, or 273.5, or any sex offense listed in Section 290, except for the offense specified in subdivision (d) of Section 243.4, and where the agency or employer hires the prospective employee or volunteer, the agency or employer shall notify the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer. A conviction for a violation or attempted violation of an offense committed outside the State of California shall be included in this notice if the offense would have been a crime specified in this subdivision if committed in California. The notice shall be given to the parents or guardians with whom the child resides, and shall be given at least 10 days prior to the day that the employee or volunteer begins his or her duties or tasks. Notwithstanding any other provision of law, any~~

1 person who conveys or receives information in good faith and in
2 conformity with this section is exempt from prosecution under
3 Section 11142 or 11143 for that conveying or receiving of
4 information. Notwithstanding subdivision (d), the notification
5 requirements of this subdivision shall apply as an additional
6 requirement of any other provision of law requiring criminal record
7 access or dissemination of criminal history information.

8 (2) The notification requirement pursuant to paragraph (1) shall
9 not apply to a misdemeanor conviction for violating Section 261.5
10 or to a conviction for violating Section 262 or 273.5. Nothing in
11 this paragraph shall preclude an employer from requesting records
12 of convictions for violating Section 261.5, 262, or 273.5 from the
13 Department of Justice pursuant to this section.

14 (d) Nothing in this section supersedes any law requiring criminal
15 record access or dissemination of criminal history information. In
16 any conflict with another statute, dissemination of criminal history
17 information shall be pursuant to the mandatory statute. This
18 subdivision applies to, but is not limited to, requirements pursuant
19 to Article 1 (commencing with Section 1500) of Chapter 3 of, and
20 Chapter 3.2 (commencing with Section 1569) and Chapter 3.4
21 (commencing with Section 1596.70) of, Division 2 of, and Section
22 1522 of, the Health and Safety Code, and Sections 8712, 8811,
23 and 8908 of the Family Code.

24 (e) The department may adopt regulations to implement the
25 provisions of this section as necessary.

26 (f) As used in this section, “employer” means any nonprofit
27 corporation or other organization specified by the Attorney General
28 which employs or uses the services of volunteers in positions in
29 which the volunteer or employee has supervisory or disciplinary
30 power over a child or children.

31 (g) As used in this section, “human resource agency” means a
32 public or private entity, excluding any agency responsible for
33 licensing of facilities pursuant to the California Community Care
34 Facilities Act (Chapter 3 (commencing with Section 1500)), the
35 California Residential Care Facilities for the Elderly Act (Chapter
36 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing
37 with Section 1568.01), and the California Child Day Care Facilities
38 Act (Chapter 3.4 (commencing with Section 1596.70)) of Division
39 2 of the Health and Safety Code, responsible for determining the
40 character and fitness of a person who is:

1 ~~(1) Applying for a license, employment, or as a volunteer within~~
2 ~~the human services field that involves the care and security of~~
3 ~~children, the elderly, the handicapped, or the mentally impaired.~~

4 ~~(2) Applying to be a volunteer who transports individuals~~
5 ~~impaired by drugs or alcohol.~~

6 ~~(3) Applying to adopt a child or to be a foster parent.~~

7 ~~(h) Except as provided in subdivision (e), any criminal history~~
8 ~~information obtained pursuant to this section is confidential and~~
9 ~~no recipient shall disclose its contents other than for the purpose~~
10 ~~for which it was acquired.~~

11 ~~(i) (1) As used in this subdivision, “community youth athletic~~
12 ~~program” means an employer having as its primary purpose the~~
13 ~~promotion or provision of athletic activities for youth under 18~~
14 ~~years of age.~~

15 ~~(2) A community youth athletic program, may request state and~~
16 ~~federal level criminal history information pursuant to subdivision~~
17 ~~(a) for a volunteer coach or hired coach candidate. The director of~~
18 ~~the community youth athletic program shall be the custodian of~~
19 ~~records.~~

20 ~~(3) A community youth athletic program may request from the~~
21 ~~Department of Justice subsequent arrest notification service, as~~
22 ~~provided in Section 11105.2, for a volunteer coach or a hired coach~~
23 ~~candidate.~~

24 ~~(j) (1) A business licensee subject to the provisions of Section~~
25 ~~18950 of the Business and Professions Code is an employer for~~
26 ~~purposes of subdivision (a).~~

27 ~~(2) A business licensee described in paragraph (1), may request~~
28 ~~from the Department of Justice subsequent arrest notification~~
29 ~~service, as provided in Section 11105.2, for an employee of the~~
30 ~~business.~~

31 ~~(k) Compliance with this section does not remove or limit the~~
32 ~~liability of a mandated reporter pursuant to Section 11166.~~

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